

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of M. S. Hatfield, Minor.

UNPUBLISHED
December 12, 2013

No. 314578
Saginaw County Circuit Court
Family Division
LC No. 12-033604-NA

Before: MURPHY, C.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right the circuit court's order terminating her parental rights as to her minor child pursuant to MCL 712A.19b(3)(b)(i), (g), (j), and (k)(iii). For the reasons set forth in this opinion we affirm.

The Department of Human Services filed a petition seeking jurisdiction over the minor child after the six-week-old infant was brought to a local hospital with various severe injuries, including a fractured arm, rib fractures, skull fractures, and bilateral retinal hemorrhaging. Termination of respondent mother's parental rights was sought in both the original and the amended petitions, alleging violations of MCL 712A.19b(3)(b)(i), (g), (j), and (k)(iii).

At the combined adjudication and initial disposition hearing, expert testimony from numerous medical professionals described the child's injuries as clearly indicative of child abuse. While no evidence conclusively showed respondent to be the perpetrator of the abuse, substantial testimony was offered showing that respondent failed to seek timely medical treatment for her child, and that respondent was also unable to offer any reasonable explanation for the injuries. Respondent admitted to an investigating officer that even after the minor child was in distress, respondent chose to walk to a local market to get something to eat prior to taking the child to the hospital for treatment. Further testimony indicated that respondent made little effort to utilize the reunification services offered to her, and that she was not consistent in her participation in services until after her detention in a juvenile facility.

Following the testimony of various medical providers, CPS workers and friends and relatives of respondent the trial court found clear and convincing evidence to terminate respondent's parental rights explaining:

First, I am satisfied that there is clear and convincing evidence to support the termination of her parental rights under 19(b)(3)(b)(i). That section allows termination if the child or a sibling of the child has suffered physical injury or

physical or sexual abuse under one or more of the following circumstances, and I am satisfied that sub-1 applies here. The parent's act caused the physical injury or physical or sexual abuse and the Court finds that there is reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home. There is also a basis to support termination by clear and convincing evidence under 19(b)(3)(g); the parent, without regard to intent, fails to provide care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the case of the child. And I'm satisfied that's true and I'll have more to say about that why I'm satisfied it's true in a moment. I'm satisfied also that there is a basis to support termination of her parental rights under 712A.19b(3)(j). There is a reasonable likelihood based on the conduct or capacity of the child's parent that the child will be harmed if she is returned to the home of that parent. And finally, I am satisfied, as I already noted from (b) that [respondent] is responsible for the injuries to this child and I am satisfied, therefore, that (k) sub-3 applies, the parent abused the child and the abuse included, as sub-3 does, battery and torture or other severe physical abuse. I'm satisfied that she was the responsible party, but assuming she was not, the failure to protect and/or to follow through even after being advised to take the child to the hospital and instead going down to the store to get her sister something sweet gives me serious concern about the priorities here.

The trial court then addressed the best-interests determination, stating:

That sends me to 712A.19b(5). Is it in the best interest of this child to terminate the right of the child's mother when we're not talking about terminating the rights of the child's father? Yes, I think it is. When one looks at the seriousness of these injuries to this child and knows that when at liberty in the community the young lady is not even following the rules that would have made her available to be there and utilize the services that would enable her to care for this child. I cannot see that it is appropriate to ask the child to wait. As noted—first of all, the child is not with a relative at this point and we don't know if or when that's going to happen; it may, and I give a great deal of possibility that [her legal father] will gain care of his child, but right now I'm dealing with speculation—the child is not with a relative. But assuming that the child were placed with another relative or with the father, I'm satisfied that [former CPS worker] Ms. Bruno is quite correct that it's not in this child's interest to leave an opening that if something happened to that father, something happened to that relative, that [respondent] could again regain custody of this child. We're talking about a child who is very likely going to carry lifelong physical scars in many ways of what has happened to her. That happened in the care of her mother. Even allowing for the fact that her mother is only 16 years of age, I do not see in the record anything that tells me that she is willing to step forward and can be trusted to assume care in the future, and I am satisfied while, as [CPS worker] Ms. Taylor was questioned and said yes, it might be informative to get a psychological evaluation but it's necessary to wait to do that. I have a pretty good picture of a young woman, who facing all of this couldn't show up to a meeting with her probation officer on a regular basis and

who wasn't living where she was supposed to be living. I do find that probative. I find it probative that what we're talking about in terms of compliance with services is when she's locked up; that tells me a great deal. I am satisfied that whether the child was placed with father tomorrow, this mother should have no legal right to possibly endanger this child in the future. Accordingly, this Court will enter an order that terminates her rights to the child.

Based on the above findings, the trial court issued an order terminating respondent's parental rights on January 16, 2013. This appeal then ensued.

On appeal, respondent argues that the trial court clearly erred in finding that termination of respondent's parental rights was supported by clear and convincing evidence. Specifically, respondent argues that there is no clear and convincing evidence showing that she is the one that caused the minor child's injuries.

This Court reviews for clear error the trial court's factual findings in an order to terminate parental rights. See MCR 3.977(K); *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). "[T]he preponderance of the evidence standard applies to the best-interest determination." *In re Moss*, 301 Mich App 76, 83; 836 NW2d 279 (2013).

"A finding is 'clearly erroneous' [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Rood*, 483 Mich at 91, quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (quotation marks omitted). This Court must give regard "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011); see also MCR 2.613(C).

"Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *Ellis*, 294 Mich App at 32.

The trial court held that clear and convincing evidence existed to terminate respondent's parental rights under MCL 712A.19(3)(b)(i). That subsection provides that parental rights may be terminated if:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act cause the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

The trial court found that termination was warranted under MCL 712A.19b(3)(b)(i) because the evidence supported a finding that the minor child was a victim of severe abuse. The trial court noted that the minor child had several severe injuries, including "a skull fracture, broken ribs, a broken arm—fractured arm and severe retinal hemorrhaging which the ophthalmologist who qualified as an expert finds inconsistent with almost anything except shaken baby syndrome."

Respondent's argument that there was a lack of direct evidence that she was the perpetrator of the harm directed against the minor child fails to take into consideration past precedent of this Court. First, termination of parental rights under MCL 712A.19b(3)(b)(i) "is permissible even in the absence of definitive evidence regarding the identity of the perpetrator when the evidence does show that the respondent or respondents must have either caused or failed to prevent the child's injuries." *In re Ellis*, 294 Mich App at 35-36. Second, this Court has upheld terminations under MCL 712A.19b(3)(b)(i), (g), (j), and (k)(iii), even in the absence of determinative proof regarding the identity of the abuser, in cases where the evidence supported a finding that the child's severe physical injuries were either intentionally inflicted by the respondent, or caused by the respondent's failure to prevent the injuries. See *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011). We therefore find no error in the trial court's determination that each of the cited statutory grounds for termination has been established by clear and convincing evidence. See MCL 712A.19b(3)(b)(i), (g), (j), (k)(iii); see also MCR 3.977(K), MCR 3.902(A), MCR 2.613(C); *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

In light of the child's severe injuries, respondent's failure to seek timely medical treatment for said injuries, and respondent's lackluster attempts to participate in the reunification services offered to her, we find that the record evidence also supported the trial court's finding that termination of respondent's parental rights was in the minor child's best interests. MCL 712A.19b(5); see also *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello